



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1995

Ms. Leslie Lawler  
Open Records Liaison  
Elder Law and Public Health Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR95-949

Dear Ms. Lawler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34087.

The Office of the Attorney General (the "OAG") received a request for all the public information relating to certain health care industry companies.<sup>1</sup> You contend that the requested information is excepted from required public disclosure under sections 552.101 and 552.110 of the Government Code.<sup>2</sup>

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the marked portions of the documents submitted as Exhibit A1 are confidential pursuant to section 17.61 of the Deceptive Trade Practices-Consumer Protection Act, subchapter E of the Business and Commerce Code. We agree. Accordingly, pursuant to section 17.61(f) of the Business and Commerce Code, the OAG must withhold the marked information from public disclosure.

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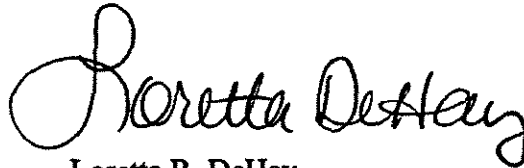
<sup>1</sup>We note that the requestor and the OAG and the requestor and the attorney representing three of the health care industry companies have negotiated the scope of the request for public information. This ruling applies only to the information currently at issue.

<sup>2</sup>We note that the OAG initially raised sections 552.101 through 552.123 of the Government Code. The subsequent brief submitted by the OAG--concerning which exceptions apply, why they apply, and to what information they apply--only addresses sections 552.101 and 552.110. See Open Records Decision Nos. 542 (1990), 532 (1989), 515 (1988), 363 (1983) (governmental body has burden of establishing why and how exception applies to requested information). We therefore only address in this ruling the applicability of sections 552.101 and 552.110.

You have also raised section 552.110 which excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The governmental body or the company whose records are at issue must make a prima facie case for exception as a trade secret under section 552.110. See Open Records Decision No. 552 (1990) at 2-5 (discussing definition of trade secret and six factors which should be considered when determining whether information is trade secret). The OAG made no arguments as to the applicability of section 552.110. The one company that submitted arguments to this office concerning its trade secret claim did not make a prima facie case for exception as a trade secret nor did it demonstrate the applicability of the six factors of a trade secret. Accordingly, the OAG may not withhold the requested information under section 552.110 of the Government Code. Except for the information marked in Exhibit A1 as confidential under section 17.61(f) of the Business and Commerce Code, the information must be released.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/LBC/rho

Ref: ID# 34087

Enclosures: Submitted documents

cc: Mr. James E. Gjerset  
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Austin, Texas 78701-3236  
(w/o enclosures)

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<sup>3</sup>We note that one company raised section 552.103. As we state above, the OAG does not establish why or how section 552.103 applies to the requested information. Section 552.103 protects a governmental body's position in litigation, not that of a third party. Open Records Decision No. 541 (1990) (litigation exception does not implicate third party rights and is waivable by governmental body).